

Criminal Appeal (SJ) No.337 OF 1993

Against the order of conviction and sentenced dated 03.09.1993 passed by 1st Additional District & Sessions Judge, Jamui, in Session Case No. 188 of 1991/Trial No. 2 of 1992.

UDDIN MIAN @ MUDDIN MIAN, son of Sakul Mian, resident of village – Bijayia, P.S. – Sono, District – Jamui.

-----Appellant.

Versus

The State of Bihar

----- Opposite Party.

For the Appellant : Mr. Ranbir Singh, Amicus Curiae
For the State : Mr. Ajay Mishra, Additional Public Prosecutor

P R E S E N T

THE HON'BLE MR. JUSTICE AKHILESH CHANDRA

Akhilesh Chandra, J.

The solitary appellant has preferred this

appeal against order of conviction under section 364/149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 10 years awarded by learned 1st Additional District and Sessions Judge, Jamui, in Session Case No. 188 of 1991/Trial No. 2 of 1992 on 3rd September 1993.

2. The prosecution case is based on the fardbeyan (Ext.1) of Krishna Prasad Burnawal (P.W.2) recorded on 13.11.1990 by Surendra Prasad Singh, Officer-in-Charge, Sono Police Station, at 8.00 A.M. is that in the previous evening at about 6.00 P.M., while the informant was at his grocery shop, three persons Ramzan Mian, Uddin Mian (appellant) and one Kalho

Mian with six unknown well armed arrived. Ramzan and Kolha Mian got hold of him besides his son Ashoke Kumar Burnawal (P.W.5) aged about 10 years, Bijay Burnawal (not examined) aged about 5 years and brought all the three to Kadwa Pahari and started assaulting for a sum of Rs. 50,000/-. He further assured that on payment of the amount they will release his eldest son and on assurance let off informant and his youngest son Bijay Kumar Burnawal, money was to be paid to Ramzan Mian. Reason behind the occurrence as stated is that Ramzan Mian had taken some article on credit from his shop on demand he threatened for dire consequences. The miscreants proceeded towards west of his house with P.W.3 the informant, when his youngest son was returning to his house in the way met with the villagers who had assembled there after learning about the occurrence on their request he disclosed names of three miscreants and happenings with him. Meanwhile, the appellant Uddin Mian @ Muddin Mian was apprehended by the villagers on chase who confessed the guilt in their presence and was handed over to Chowkidar and Dafadar (both not examined). During chase, he also sustained some simple injuries, in the morning the villagers with

apprehended appellant came to police station where he was handed over and fardbeyan was recorded on the basis whereof Sono P.S. Case No. 70/1990 was instituted. During investigation, P.W.3 victim returned home and charge sheet was submitted and after taking cognizance case was committed to the court of sessions and trial commenced after framing the charge for the offence under section 364/149 of the Indian Penal Code against four persons, but ultimately till the end of the trial only three persons were there, out of whom two have been acquitted, but the appellant stands convicted and sentenced giving rise to this present appeal.

3. Since none was turning up to represent the appellant earlier vide order dated 18.11.2010, Sri Ranbir Singh, Advocate, was appointed as amicus curiae, was represented the appellant today.

4. In order to substantiate the charges prosecution has examined altogether 10 witnesses besides producing documentary evidence by way of Exhibits.

Ext. 1 : Fardbeyan

Ext. 2 : Seizure List

Ext. 3 : Statement u/s 164 Cr.P.C.

Ext. 4 : Requisition

Ext. 5 & 5/1: Injury report.

5. From the trend of cross examination and submissions, it appears that defence has denied the allegation and treated false allegation, but neither any oral or any documentary evidence has been produced. Now, it is to be seen in this appeal whether prosecution has been able to substantiate the charges against the appellant without any shadow of reasonable doubt or finding of the court below needs interference.

6. From the very fardbeyan of the informant P.W.3, it appears that entire occurrence took place only in retaliation of demand raised by the informant before one Ramzan Mian (co-accused) to pay the amount of the articles taken on credit, who instead threatened for dire consequences, and during entire episode some of the miscreants was to realize Rs. 50,000/- from the informant just to teach him some lesson.

7. Narayan Yadav (P.W.1), has come to support the prosecution case arrived at the door of informant on alarm where wife of the informant P.W.6 intimated him that miscreants has taken out her two sons and husband and proceeded towards Kadwa Pahari. The villagers started proceeding towards the

side but found informant and his one son coming and informant P.W.2 intimated them about the happenings with him, then villagers went to the house of the three named accused persons but do not met, roughly two hours thereafter again the team with Choukidar and Dafadar went to the house of Kolha Mian who escaped from there then the group went to the house of the appellant Uddin Mian @ Muddin Mian who went in the house of another from where he was apprehended and subsequently handed over to the police. When the police gave him some treatment he disclosed and confessed his guilt. In the examination-in-chief this witness has changed the sequence and statement of informant as stated in the fardbeyan with respect to apprehension of the appellant by the villagers. Whereas P.W.2 the informant in examination-in-chief has almost narrated the statement made in the fardbeyan with slight improvement regarding explosion of bomb and during way assault by means of pistol etc. Nowhere he said that the villagers went to the house of either of the three named accused persons and in second attempt one Kolha Mian escaped from their custody and the appellant was apprehended from the house of another. Rather according to P.W.2 appellant was apprehended from

the way itself. Now, in cross examination this informant admits that it was a dark night when occurrence took place, though he asserts that light was there in his shop but in absence of examination of Investigating Officer or any supporting material, his version also becomes doubtful.

8. In paragraph 22 he says that he was dragged by miscreants up to 1 K.M. from his house where he and one of his sons was released but another was taken with them. This story also becomes doubtful, if at all, miscreants had to release the informant and his one son and keep another son under confinement. This much could have been done at the shop itself. Just to release after some threats informant and his son aged about 5 years, the two could not have been dragged for one K.M. taking risk of apprehension. This informant asserts when villagers apprehended the appellant Uddin @ Mudin Mian he was handed over to the Chowkidar and Dafardar but for the reasons best known to the prosecution, none of these two also have been examined.

9. Ashoke Kumar Burnawal (P.W.3) aged 12 years at the time of examination has come to support prosecution case but enhance the amount of demand from 50,000/- to 1,00,000/- and further

improves the case that when he accepted to pay Rs. 15,000/- then his father and younger brother would be released. But as security he was taken with the miscreants who kept him for about a week and he has not complained any ill-treatment. In paragraph 2, he says that he was released near Kadwa Pahari and while he was returning to his house Officer-in-Charge of Sono Police Station met in the way and brought him to the police station and during investigation he has went to the places where he was kept confined with the police and showed such places from where one blanket was also recovered. Seizure list was prepared. He proved his signature Ext. 2 thereon. Further his statement under section 164 of Code of Criminal Procedure was recorded and marked as Ext. 3. But no police officials has been examined to say about the inspection of places or material finding etc. or even meeting with this witness in the way who as said was released suo motu by the miscreants without any payment etc.

10. In para 23, this witness says that he meet with his father 11 days after the occurrence out of which for 6 days he was kept under confinement by the miscreants but for 5 days he remained with the police. There is none to explain very purpose of such

detention of this witness P.W.3 with the police, or even to support his assertion.

11. Rameshwar Yadav (P.W.4) is a hearsay witness. There is nothing worth mentioning in his evidence. Dhalo Yadav (P.W.5) is a witness to say what P.W.1 contrary to P.W.2 has said in his examination-in-chief. Rekha Devi @ Rakha Kumari (P.W.6) is the wife of the informant and mother of P.W.3 stated about the occurrence taken place at her shop. During cross examination, she admits nothing was paid to the miscreants and she has no concern with the dealings of her husband at the shop with the customers.

12. Dr. Chandrika Prasad Mishra (P.W.7) Medical Officer, Primary Health Centre, Sono, has examined the appellant who sustained some injuries and proved the Injury Report Exhibit – 5 and 5/1. Injuries are simple in nature. As per prosecution case, the appellant sustained some injuries while he was apprehended by the villagers with respect to which there is two sets of statement one by P.W.2 and another by P.W.1 and P.W.4. Ajit Kumar Singh (P.W.8), Ghayas Hadi (P.W.9) and Raj Kumar Sinha (P.W.10) are formal witnesses respectively proved Ext. 6 series.

13. As stated above, the witnesses examined by the prosecution had stated in consistent statements with regard to apprehension of the appellant. It is the case of informant P.W.2 that he was apprehended from the way, whereas the witnesses came to support and states his apprehension from the house of another. Wherein in order to escape he took shelter after on chase from his own house. No doubt, P.W.2 and P.W.3 claimed to identify this appellant as one of the participant of the occurrence, but, in fact, there is no independent witness out of the family, the persons who were at the relevant time purchasing some articles from grocery shop of the informant have not been examined for no reason besides other relevant and important witnesses Chowkidar and Dafadar under whose custody the appellant was kept confined in whole night after his alleged apprehension. That apart Investigating Officer has also not been examined. There is no explanation about the circumstances compelling the miscreants to release victim P.W.3 from their captivity without any pressure or fulfillment of their alleged demand, all such creates grave doubt against entire prosecution version.

14. Thus, on overall consideration of the facts and circumstances of the case, I find and hold

that prosecution has not been able to remove the clouds created against the case and once doubt is not removed, the appellant deserves the benefit. I appreciate the assistance provided by Mr. Ranbir Singh, learned Amicus curiae. Let a copy of the first page and last page of this judgment be handed over to him so that he may realize his fees from the High Court Legal Services Committee, Patna.

15. The appeal stands allowed. Order of his conviction and sentence is set aside. The appellant is on bail after substantial detention, he is set free from the liability of the bail bonds furnished on his behalf.

(**Akhilesh Chandra, J.**)

Patna High Court
Date : The 25th March 2011
Rajeev/N.A.F.R.

